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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/729,821

12/05/2003

Aloys Wobben

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EXAMINER

VERDIER, CHRISTOPHER M

ART UNIT

PAPER NUMBER

3745

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,821

Applicant(s)

WOBBEN, ALOYS

Examiner

Christopher Verdier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 and 24-30 is/are pending in the application.
- 4a) Of the above claim(s) 4, 7 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 8-22 and 24-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12-8-05, 6-16-06</u> | 6) <input type="checkbox"/> Other: _____ |

Applicant's Amendment dated June 16, 2006 has been carefully considered but is non-persuasive. Claim 17 has been amended to overcome the objection to the drawings. The abstract and specification have been amended to overcome the informalities therein. The specification has been amended to provide antecedent basis for claims 1, 5, 23, and 24, and claim 28 has been amended so that the specification provides antecedent basis for claim 28. The claims have been amended to correct the informalities therein. The claims have been amended to overcome most of the rejections under 35 USC 112, second paragraph. Correction of these matters is noted with appreciation.

With regard to claim 3, the specification still fails to provide proper antecedent basis for the limitation in claim 3 that the projections on the second actuating guide portion at at least one predetermined position touch a part of the switch. Applicant has pointed to the paragraph beginning on page 6, line 21 of the specification and has stated that claim 3 has been amended according to this paragraph. However, the specification still fails to provide proper antecedent basis for the above limitation in claim 3.

With regard to claim 1, Applicant has amended claim 1, lines 7-8 to recite that "an actuator is provided at least by an arcuate actuating guide" and has stated that this is actually disclosed in the specification in the paragraph beginning at page 2, line 19, and that this amendment overcomes the rejection under 35 USC 112, second paragraph. This argument is not persuasive, because the phrase "an actuator which is provided at least by an arcuate actuating guide" is unclear as to scope, because the phrase "at least by an arcuate actuating guide" renders

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the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by “at least by an arcuate actuating guide” would include anything in addition to the arcuate actuating guide), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). Perhaps Applicant should amend claim 1, lines 7-8 to recite “at least one arcuate actuating guide” if this is what Applicant intends to claim. With regard to claim 22, Applicant has stated that this claim has been amended to correct the indefinite claim language by deleting the phrase “in particular”. While this gesture is appreciated, claim 22 inadvertently has not been amended to remove this phrase.

Information Disclosure Statement

The information disclosure statement filed December 8, 2005 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent (German Patent 9013386 and German Patent 29520792) not in the English language. The information referred to in the above German Patents has not been considered.

Claim Objections

Claims 3 and 29 are objected to because of the following informalities: Appropriate correction is required.

In claim 3, lines 3-6, “the projections on ... of the switch” is non-idiomatic and not a complete sentence.

In claim 29, line 1, "switching apparatus" should be changed to -- wind power installation --.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 5-6, 8-22, and 24-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, lines 7-8 recite "an actuator is provided at least by an arcuate actuating guide". The phrase "an actuator which is provided at least by an arcuate actuating guide" is unclear as to scope, because the phrase "at least by an arcuate actuating guide" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "at least by an arcuate actuating guide" would include anything in addition to the arcuate actuating guide), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). Perhaps Applicant should amend claim 1, lines 7-8 to recite "at least one arcuate actuating guide" if this is what Applicant intends to claim. In claim 5, line 3, "the second actuating guide portion" is unclear if this is meant to refer to the first actuating guide portion in claim 1, line 8, or not. In claim 6, lines 3-4, "the second actuating guide portion" is unclear if this is meant to refer to the first actuating guide portion in claim 1, line 8, or not. In claim 22, line 3, the phrase "in particular" is indefinite, because it is unclear whether the limitations(s) following the phrase are part of the claimed invention. See MPEP 2173.05(d). In claim 28, line 8, "a first actuating guide portion" is a double recitation.

Allowable Subject Matter

Claims 1 and 28 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 2-3, 5-6, 8-22, 24-27, and 29 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Examiner's Comment

Applicant has stated that claims 4, 7, and 30 are canceled to reduce the number of disputed issues and facilitate early allowance of the elected Species I. However, these claims have not been canceled. Clarification is requested as to whether or not Applicant intends to cancel these claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Verdier whose telephone number is (571) 272-4824. The examiner can normally be reached on Monday-Friday from 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward K. Look can be reached on (571) 272-4820. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

C.V.
September 5, 2006



Christopher Verdier
Primary Examiner
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